

NO. 21778

United States
Court of Appeals
for the Ninth Circuit

THUMAN EUGENE STANPHILL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

*On Appeal from the Judgment of the United States
District Court for the District of Oregon*

BRIEF OF APPELLEE

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The Appellee, United States of America, accepts Appellant's "Jurisdictional Statement."

**STATEMENT OF EVIDENCE REBUTTING APPELLANT'S
MINISTERIAL CLAIM**

Appellant Stanphill submitted his Classification Questionnaire on September 4, 1959, and did not then claim to be a minister, student preparing for the ministry, nor a conscientious objector. (SS File-11, 13)¹ Stanphill stated he was a married chainman, working 40 hours a week, and receiving \$250.00 a month from the Oregon State Highway Commission. (SS File- 13, 14) He was classified 1-A.

¹ SS File — Appellant's Selective Service File.

Stanphill was employed by the Lake County Road Department in 1960, and in 1961 he worked at the Bunker Hill Zinc Plant. However, in 1962, Stanphill was self-employed in ranch work, hauling hay. (SS File- 227, 230, 232)

On July 9, 1962 Appellant Stanphill reported he was separated from his wife and that he was not maintaining a bona fide home for his child. He was instructed that this would put him in line of call again, and Stanphill stated he didn't think he would have to go anyway because he was a conscientious objector. (SS File-225)

Stanphill submitted a Special Form for Conscientious Objectors on July 20, 1962 and stated he was baptized a Jehovah's Witness on October 25, 1958, and, as such, had studied the Bible since 1957. (SS File - 2)

The Appellant was a Jehovah's Witness before he married, but promised to give up his religion after his wife married him. He *gave up his religion* from the spring of 1959 until his wife left him in June, 1962. His *reason for deserting his religion* when he married was that he thought his prospective in-laws would hold it against him if they knew he was really a Jehovah's Witness. (SS File-212)

On May 21, 1964, Stanphill reported moving to

East Ely, Nevada, and enclosed a "Newspaper clipping of me and why I came to East Ely, Nevada." (SS File - 176) The article from the Ely Daily Times, dated May 15, 1964, quoted Stanphill as being an unmarried *minister* newly arrived to preach. "He is employed at a local grocery store in the produce department." (SS File - 176)

On June 7, 1965, Stanphill reported that he had been employed one year with the City Gas Company at East Ely, Nevada. (SS File - 115) In a letter of the same date, the Appellant requested a ministerial classification and admitted that he worked 40 hours a week for the City Gas Company in order to support his daughter as well as himself. Stanphill wrote that there were 20 *persons in the East Ely congregation* and that "only the Congregation servant and I are the only qualified male members to handle the affairs of the congregation here." (SS File - 111, 112)

Appellant also wrote "my ministry is my primary vocation and my secular work is secondary." Stanphill submitted no evidence of time spent as a minister nor did he submit a regular Pioneer certificate. However, he enclosed a letter dated September 17, 1964 from the Watchtower Bible and Tract Society appointing him, a publisher, to Assistant congregation servant, Literature servant, Ministry school servant and Book study conductor. (SS File - -112)

On June 25, 1965, Appellant Stanphill submitted letters in verification of his ministerial claim. The Ely Congregation servant, Oren Burnett, wrote that Stanphill "devotes time to preparing and conducting a book study at our Kingdom Hall weekly. Prepares and conducts a ministry school weekly. Also serves as Assistant Congregation servant: Aside from these appointed duties, serves *many* hours in the field ministry preaching and teaching." (SS File - 107)

Miss Esther Morris stated that since August, 1964, Stanphill had been boarding with her and "he has been conductor of at least two of our meetings every week and as service center conductor he has taken a *leading part* in the house-to-house ministry, in the training of other ministers and conducting home Bible studies himself." (SS File - 108)

A letter from Appellant Stanphill received August 13, 1965, advised that he *averaged 30 hours a month in actual preaching from door-to-door*. He attended five meetings a week "which is around 21 additional hours plus my time in preparing for these meetings." Instructing the congregation came to an average of 25 hours a week and "all of these comes to around 76 hours a month that I engage in my ministry work." Stanphill again admitted holding down a 40 hour a week job and ended his letter as follows:

"However, I am engaging in the maximum time in which *my affairs can allow as being a minister* in Jehovah's Service." (SS File - 89)

Appellant was continued in his 1-O classification and requested a personal appearance before his local board on August 30, 1965. (SS File - 87) On September 5, 1965, Stanphill requested postponement of his personal appearance until October, 1965. (SS File-85) Moreover, on September 20, 1965, Stanphill requested that his case be transferred for personal appearance to the State Appeal Board in Nevada:

"Due to the hardship of the trip and *my having to take around 4 working days of my job off* I would appreciate it greatly if I could have the privilege of appearing before the State appeal Board of Nevada. *This would constitute me only losing one day of work.*

"*I work for a propane gas company* hear (sic) and the weather is as such that we are greatly rushed and in lack of manpower." (SS File - 81)

At a personal appearance before his local board on October 12, 1965, Appellant stated that he had been practicing his ministry since 1958, but now only worked 72 hours a month as a minister. Stanphill claimed it was necessary for him to devote part-time (40 hours a week) to outside employment for personal sustenance and child support. (SS File - 71, 72) Appellant Stanphill submitted a printed copy of "The Sermon

of the Week" indicating that the Sermon of the Week for September 16, 1965 was by the Appellant whose title was listed as *Assistant Overseer*. (SS File - 73)

Stanphill was ordered to report to his board on May 31, 1966 for instruction to proceed to assigned civilian work. (SS File - 42) He was ordered to report to the University of Kansas Medical Center on June 3, 1966. (SS File - 41) Stanphill refused to report either to his board or to the University of Kansas Medical Center as ordered. (SS File - 37, 35)

ARGUMENT

I

APPELLANT FAILED TO SUSTAIN THE BURDEN OF ESTABLISHING ELIGIBILITY FOR MINISTERIAL EXEMPTION

The ministerial exemption claimed by Appellant is a matter of legislative grace and a selective service registrant has the burden of establishing his right to such exemption. *Dickinson v. United States* (1953), 346 U.S. 389, 395, 74 S. Ct. 152 98 L. Ed. 132.

Stanphill was baptized a Jehovah's Witness on October 25, 1958. "This fact alone would not render appellant a minister within the meaning of the Training and Service Act as would entitle him to the ministerial exemption here sought." *United States v. Beatty* (C.A. 6, 1956), 350 F.2d 287, 288-289.

"Under the statutory provisions granting exemptions to 'regular *** ministers of religion' the defendant was required to show that the ministry was his 'customary vocation.' 50 U.S.C. App. §§ 456(g), 466(g). He was required to demonstrate that he was not merely a person who 'incidentally preaches and teaches' the religious principles of a church or sect, but that he is 'recognized by such church, sect, or organization as a regular minister.' " *United States v. Kushmer* (C.A. 7, 1966), 365 F.2d 153, 155-156.

Stanphill failed to sustain his burden of proving that his position in the East Ely congregation of only 20 persons was such that his removal would "leave a flock without its shepherd." *United States v. Norris* (C.A. 7, 1965), 341 F.2d 527, 530. The East Ely congregation already had a presiding minister when Stanphill voluntarily arrived to "aid the congregation."

Not only did Stanphill fail to submit any evidence showing he was duly appointed presiding minister of the Ely congregation, he submitted no proof of appointment as a regular Pioneer minister. Moreover, there is no evidence that Stanphill devoted (and submitted monthly reports thereof to his international office) 100 hours per month to ministerial activities in the field. *United States v. Tettenburn* (Dist. Md., 1960), 186 F. Supp. 203. Also see *Badger v. United States* (C.A. 9, 1963), 322 F.2d 902, footnote 5 at pp. 907-908.

Stanphill failed to show that his role was little more than that of all the members of his congregation (e.g. Esther Morris):

“that of spreading among the public the beliefs of Jehovah’s Witnesses, and of educating those already believers in the ways of the faith.”

Despite the fact that Stanphill might have been authorized to do so, “there is no convincing proof that it is a part of his regular task to administer the ordinances or the ‘rites and ceremonies’ of public worship.” *United States v. Stewart* (C.A. 4, 1963), 322 F.2d 592, 595. Stanphill submitted no evidence that he stood in the relation of a minister to a congregation or in an equivalent relation as the recognized leader of a group of lesser members of his faith. *Fitts v. United States* (C.A. 5, 1964), 334 F.2d 416.

II

THERE IS A BASIS IN FACT FOR THE CLASSIFICATION WHICH THE LOCAL BOARD GAVE THE APPELLANT

The local board in the instant case has made a record which negates Appellant’s claim for ministerial exemption. There exists in that record proof which is incompatible with Stanphill’s claim. There is affirmative evidence conclusively showing that Stanphill was a *part-time, half-time, occasional and irregular preacher* of his religion. *Dickinson v. United States* (1953), 346 U.S. 389.

Not only was Appellant a part-time preacher, he was a part-time Jehovah’s Witness. He forsook and

concealed his alleged sect in order to marry his wife; moreover, he deserted his religious practices for a period of three years. When it again became advantageous to do so, he donned the mantel of a Jehovah's Witness and by means of a self-serving newspaper statement foisted himself upon the East Ely, Nevada congregation.

In *Badger v. United States* (C.A. 9, 1963), 322 F.2d 902, this Court, at 907, said:

"Thus the amount of time appellant spent in his ministerial duties, particularly in 'preaching and teaching the principles' of his sect, would be not only a proper standard for determining his classification, but a crucial one as well."

There is proof in the record which is incompatible with Stanphill's claim of ministerial exemption.

On August 13, 1965, Appellant wrote that his ministry work totalled 76 hours a month. However, under oath on October 12, 1965, he stated that he only worked 72 hours a month as a minister. Only an average of 30 such hours were engaged in actual preaching in field ministry.

Stanphill consistently maintained that the ministry was his primary vocation and secular work secondary. Nonetheless, the record clearly shows he recognized the primacy of delivering gas over his alleged ministry:

FIELD MINISTRY — 30 hours a month
DELIVERING GAS — 180 hours a month

In *Fitts v. United States* (C.A. 5, 1964), 334 F.2d 416, the Court, at page 421, said:

“***The defendant freely admitted to Major Weeks that he took part in his religious activities only when he had spare time; when the weather was good and there was farm work to be done, his farming took precedence over his ministerial affairs.”

Stanphill admitted the same when he refused to meet his local board at a gratuitously granted personal appearance to defend his alleged ministerial status. Instead of rushing to the defense of his alleged primary vocation, Stanphill sought postponement and transfer in order to protect his secular work. On September 20, 1965, Appellant wrote:

“Due to the hardship of the trip and my having to take around 4 working days of my job off I would appreciate it greatly if I could have the privilege of appearing before the State appeal Board of Nevada. This would constitute me only losing one day of work.

“I work for a propane gas company hear (sic) and the weather is as such that we are greatly rushed and in lack of manpower.”

As to Stanphill's continual complaint that he has to hold down a 40 hour a week job because he has to support his daughter and himself, the language of

the Court in *United States v. Kushmer* (C.A. 7, 1966), 365 F.2d 153, 156, is apropos:

“***The financial hardship which may have precipitated the defendant's diminished service is unfortunate, but it does not negate the fact that the ministry is not his customary vocation. The facts do not establish his eligibility for the exemption claimed.”

CONCLUSION

The Appellee, United States of America, concludes that there was affirmative evidence in the Selective Service file refuting Appellant's claim to status as a minister. Therefore, the trial court did not err in denying Appellant's motion for acquittal. It is respectfully requested that the judgment of the trial court be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing brief is in full compliance with those rules.

Dated this 24th day of August, 1967.

MALLORY C. WALKER

Assistant United States Attorney

